

(1984) 06 KAR CK 0013
In the Karnataka High Court
Case No : S.T.R.P. No. 8 of 1981

S. Narayana Setty

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 18-06-1984

Acts Referred:

Evidence Act, 1872 — Section 106

Karnataka Sales Tax Act, 1957 — Section 10, 23 (1), 5 (4)

Citation : (1984) ILR (Kar) 981 : (1985) 58 STC 81

Hon'ble Judges : S.A. Hakeem, J; Jagannatha Shetty, J

Bench : Division Bench

Advocate : S.G. Shivaram, for K. Srinivasan, for the Appellant; S. Rajendra Babu, High Court Government Advocate, for the Respondent

Judgement

Jagannatha Shetty, J.—This tax revision u/s 23(1) of the Karnataka Sales Tax Act, 1957 (the "Act"), is directed against the order of the Tribunal in S.T.A. No. 555/79 dated December 20, 1979.

2. The petitioner is a registered dealer under the Act. For the assessment year 1972-73 ending on September 30, 1973, he declared that he had purchased groundnut seeds of the value of Rs. 10,76,816.94 and claimed exemption in respect of that entire turnover on the ground that his sellers, five in number, were the first purchasers in the State. In support of his contention he also produced declaration in form 32.

3. The assessing authority made some enquiry with the sellers who issued those declarations in form 32. It was in the enquiry revealed that groundnuts of the value of Rs. 4,45,152.00 were purchased by the assessee from the turnover relating to inter-State transaction. Accordingly the assessing authority held that the petitioner is the first purchaser to that extent liable to pay tax u/s 5(4) of the Act.

4. It may be stated that groundnuts and oil-seeds are declared goods in the

Fourth Schedule. The tax in respect of the goods would be on the purchase by the first or the earliest of the successive dealers in the State.

5. The assessing authority issued a notice to the petitioner stating :

"The cross verification made in this behalf has revealed that the G.N. seeds valued Rs. 4,45,152.00 were purchased by you out of the G.N. seeds purchased by your sellers in the inter-State trade or commerce. Therefore, you have become the first purchaser liable to tax on this turnover of Rs. 4,45,152.00. In other words, your claim for exemption in this behalf is allowed only to the extent of Rs. 6,31,664.94. The details of G.N. seeds purchased out of inter-State stock of your sellers are as under.

Particulars. ** ** *

On November 24, 1977, the petitioner replied to the proposition notice inter alia contending :

"We submit that we have no further detail except furnishing the name. We have purchased the goods against form 32 submitted to you at the time of scrutiny of account. We therefore submit that unless it is provided that the goods purchased by us from the respective dealers relate to sales effected by them out of the seeds purchased from outside, no presumption could be drawn and subjected to tax. We have faithfully acted on the declaration forms issued by our suppliers in form 32 prescribed under the Act and therefore we are not liable to pay tax on the said turnover."

6. The assessing authority, however, disallowed the claim for exemption and levied tax of Rs. 11,762.92 giving exemption in respect of the remaining turnover.

7. Being aggrieved by the assessment order the petitioner preferred an appeal to the Deputy Commissioner of Commercial Taxes (Appeals), who dismissed the same. His second appeal to the Karnataka Appellate Tribunal was also dismissed.

8. The question urged before the authorities below and reiterated before us is that form 32 is conclusive in the matter of treating the petitioner as a first dealer and the petitioner has no other means to verify whether the goods purchased from the sellers had suffered tax or not. If form 32 has been misused by such sellers for evading their tax liability although they are the first sellers in respect of those goods, the taxation authority upon verification must take appropriate action against them and not to recover tax from a person who is not liable to pay under the Act.

9. The dealer who sold the groundnuts to the petitioner were undisputedly registered dealers. They have obtained form 32 from their respective assessing authorities. Rule 26(9)(a) of the Karnataka Sales Tax Rules, 1957 (the "Rules"), provides :

"Every dealer in goods taxable at the point first sale or first purchase in the State, shall, where he is not liable to tax in respect of such goods by reason of

his not being the first seller or the first purchaser, furnish to the assessing authority a declaration in form 32 obtained from the registered dealer who sold the goods to him and for this purpose, the seller of such goods shall issue the declaration to the buying dealer."

This rule is referable to section 5(4) of the Act which inter alia provides :

"Notwithstanding anything contained in sub-section (1), a tax under this Act shall be levied in respect of the sale or purchase of any of the declared goods mentioned in column (2) of the Fourth Schedule at the rate and only at the point specified in the corresponding entries of columns (4) and (3) of the said Schedule on the dealer liable to tax under this Act on his taxable turnover of sales or purchases in each year relating to such goods."

10. The combined effect of section 5(4) of the Act and rule 26(9)(a) of the Rules is that in respect of the declared goods mentioned in column 2 of the Fourth Schedule there shall be only a single point levy and that too at the first sale or purchase in the State. In respect of the groundnuts, it should be only on the first purchase.

11. In the instant case, it is no doubt true that the assessee has produced form 32 issued by the dealers registered under the Act. But, it is well-established that mere production of form 32 does not absolve the assessing from the liability to pay tax if he is the first purchaser. It is also equally well-established that the assessee need not prove that his seller has, in fact, paid the tax as the first seller.

12. In *Govindan & Co. v. State of Tamil Nadu* [1975] 35 STC 50, the Madras High Court observed that to claim the benefit of tax on the ground that the sales effected by the assessee are second sales, the assessee need not show that his sellers have, in fact, paid tax. It is enough for the assessee to show that the earlier sales were taxable sales and that the tax was really payable by his sellers. To the same effect are observations made by this Court in *Sha Pannalal Pemraj & Co. v. Commercial Tax Officer, Hassan Circle* [1975] 35 STC 109 Mad.

In *B. V. Bhatta v. State of Madras* [1965] 16 STC 441 , the Madras High Court observed thus :

"..... that the benefit of assessability only at a single point and non assessability at other point is really in the nature of an exemption, and the burden of proving that this exemption is available to him is laid on the dealer. The reason for it is obvious. In almost all cases, the question whether a sale is a first sale or a second sale will be primarily a question of fact. This will be entirely within the special knowledge of the dealer, and it is for him, who is in possession of the material facts to supply them. Such an obligation of discharging the burden of proof can be deducted from section 106 of the Indian Evidence Act, apart from section 10 of the Sales Tax Act. What section 10 lays down is, therefore, the same broad principle enunciated in section 106 of the Evidence Act, that the onus is on the person who is in possession of special facts exclusively within his

knowledge, to disclose them to the Court, when he seeks to obtain any benefit for himself on the basis of proof of those facts"

13. Section 10 referred to therein is similar to section 6A of the Karnataka Act inserted by Karnataka Act No. 9 of 1964.

14. No doubt, the burden is on the assessee to prove that he is not liable to tax. He cannot discharge that burden by merely producing form 32 which was passed on to him by him sellers. He must produce some other acceptable evidence to lend credence to the contention that he has purchased the goods from a dealer who is liable to pay tax under the Act. If once the evidence is put on record, then it is a question of appreciation and comparing the evidence of the assessee with the evidence produced by the sellers or collected in accordance with law by the assessing officer from the sellers. If an assessee has produced acceptable evidence in addition to form 32 to show that he has purchased the goods from a person who is liable to pay tax, it would be proper for the assessing officer to accept such evidence unless he comes to the conclusion by other positive proof that the selling dealers were not liable to pay tax on the concerned goods.

15. The assessing officer, in the instant case, appears to have made an enquiry with the selling dealers and found that some of the groundnuts sold by them to the assessee were not of their inter-State transactions. That was no doubt intimated to the assessee in the proposition notice. But, the assessee in reply to that notice has denied those allegations. The assessing officer however formed an opinion that the selling dealers purchased the disputed groundnuts in the course of inter-State transactions. There was no other evidence on record except the information gathered from cross verification. The assessee has had no opportunity to look into those account books of the selling dealers. The assessee on his part has produced purchase bills to substantiate his contention that he was not the first purchaser. The assessing officer appears to have not considered the purchase bills. At any rate, the assessment order does not indicate that. He appears to have relied solely on the information collected by him from the sellers, without due regard to the documents produced by the assessee. The exercise of the Revenue should not be in the direction to have a second bite of the same cherry.

16. The orders of the appellate authorities are no better. They have proceeded on the basis that the assessee has no evidence except form 32. We have earlier pointed out that the assessee had also produced purchase bills which ought to have been properly scrutinised by the authorities.

17. If the declarations in form 32 have been misused by those selling dealers, the assessing officer should promptly initiate proceedings under the Act and the Rules to take action against such sellers.

18. In the result this revision petition is allowed and the assessment order as affirmed by the Appellate Tribunal so far as it relates to the levy of tax on purchase turnover of groundnut is quashed. The assessing officer shall give an

opportunity to the assessee to produce evidence and redo the assessment in accordance with law and in the light of the observations made. The assessee is permitted to adduce whatever evidence he chooses to show that the sellers in question were taxable under the Act.

19. The petitioner shall appear before the assessing authority on 16th July, 1984, to receive further notice.

20. In the circumstances, we make no order as to costs.